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Fed. Circ. Affirmance Rate In PTAB Cases Hit 83% In 2023

By [Ryan Davis](#) · [Listen to article](#)

Law360 (April 22, 2024, 8:23 PM EDT) -- The Federal Circuit affirmed Patent Trial and Appeal Board decisions on every issue 83.3% of the time in 2023, a new high that is notably above the historical average of 74.2%, according to the latest data compiled by [Finnegan Henderson Farabow Garrett & Dunner LLP](#) patent attorneys.

Attorneys who track the data on a blog for the firm found Friday that the appeals court's affirmance rate in the 150 America Invents Act review decisions it heard from the PTAB reached a peak last year that edged out the

83% rate in 2015, when the Federal Circuit began hearing appeals from the board.

By comparison, from 2017 through 2022, the appeals court affirmed the board on every issue between 70 and 75% of the time each year, the firm's data shows.

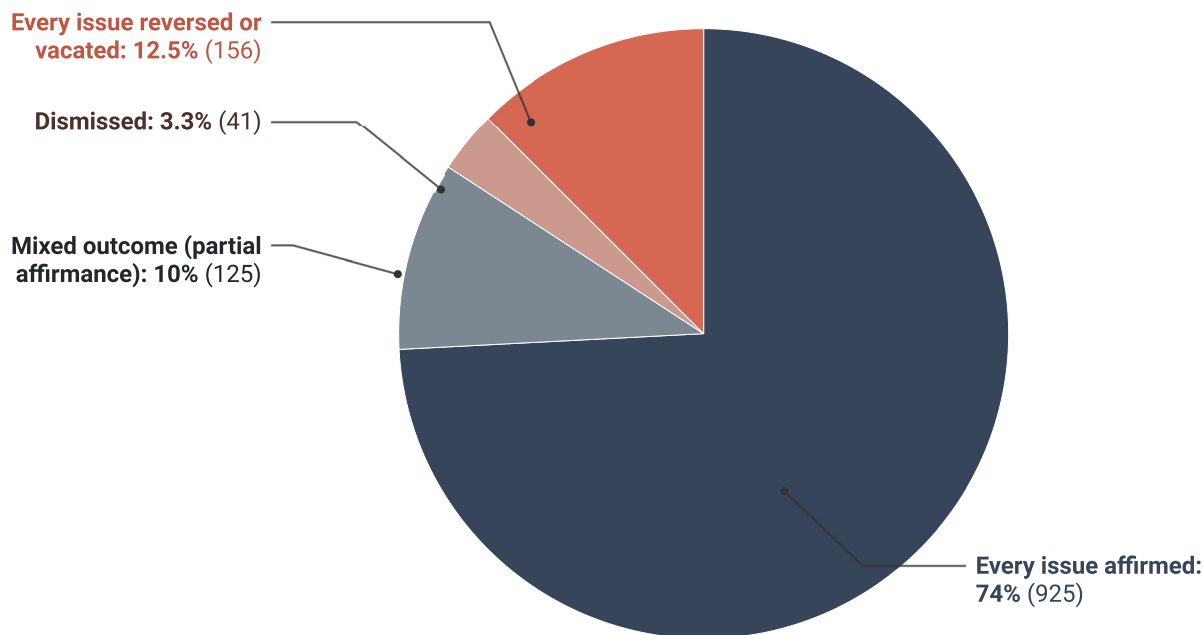
"In 2023, we saw a sharp increase in the number of appeals where every issue was affirmed," Daniel Klodowski, a Finnegan lawyer involved in putting the numbers together, said during a podcast discussing the data on Friday.

Since the PTAB began hearing cases in 2012, the Federal Circuit has decided 1,247 appeals of its decisions on inter partes reviews, post-grant reviews and covered business method patent reviews, and affirmed the board on every issue 74.2% of the time, according to the Finnegan data.

Appeals of PTAB Decisions Face Long Odds

Since 2012, most of the Patent Trial and Appeal Board decisions that have been appealed to the Federal Circuit are affirmed. This chart includes appeals of decisions in inter partes reviews, covered business method patent reviews and post-grant reviews.

Total number of appeals: 1,247



Source: Finnegan • Created with [Datawrapper](#)

In addition, the appeals court has affirmed the board on some issues and vacated or reversed on other issues in 10% of cases overall, while the PTAB's findings on every issue were reversed or vacated in 12.5% of the time.

The Federal Circuit has also dismissed 3.3% of appeals on grounds unrelated to a settlement, such as the court's lack of jurisdiction to hear appeals of PTAB decision instituting review, the firm said.

In 2023, the Federal Circuit affirmed the PTAB on some issues and vacated or reversed on others in 6% of cases, reversed or vacated on every issue 8.7% of the time, and dismissed 2% of appeals from the board, Finnegan found.

The historical data is "largely skewed toward affirmances, but there are a noteworthy number of appeals that have resulted in reversal or the decision being vacated and remanded back to the board," Klodowski said on the podcast.

Despite the high affirmance rate in 2023, the percentage of cases that the Federal Circuit upheld with a one-line order was relatively low at 40%, with the other 60% of cases receiving a full decision from the court, according to Finnegan. In 2019, by comparison, the share of one-line affirmances was close to 50%.

That means that "even if you have a high likelihood of having the PTAB's decision affirmed on appeal, you are now more likely to receive a written opinion explaining the Federal Circuit's reasoning than you would have been several years ago," Klodowski said during the podcast.

In an email to Law360, he said that the 83.3% affirmance rate and low share of one-line orders in 2023 "indicates that the Federal Circuit has been reducing its use of summary affirmances despite having more cases in which it could have employed it."

Taking into account every PTAB decision in AIA review cases that have been appealed to the Federal Circuit, the board has been affirmed without an opinion 42.7% of the time, while the appeals have provided written opinions in 57.3% of cases, according to the Finnegan data.

The number of PTAB appeals the Federal Circuit decides each year has fluctuated. It issued only 47 opinions in cases from the board in 2015, the first year PTAB cases reached the appeals court. The number grew each year before peaking at 190 in 2019, and has varied since. There were 119 decisions in 2022, but 150 last year, the data shows.

--Editing by Emily Kokoll.

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